IN THE HIGH COURT OF UTTARANCHAL, AT NAINITAL

Criminal Misc. Application No.338 of 2006

Sarafat Ansari
S/o Mohalla – Saraiaziz, Manglaur
Police Station – Manglaur
District – Haridwar .....Applicant

Versus

1. State of Uttaranchal
2. 1st Additional Civil Judge (J.D.),
   Roorkee, District – Haridwar
3. Ikram Ahmad
   S/o Islam Ahmad
   R/o Mohalla – Lalbara, Manglaur
   Police Station – Manglaur
   District – Haridwar .....Respondents

Sri Rajendra Singh, learned counsel for the applicant.
Sri Amit Bhatt learned A.G.A. for the State

Hon'ble J. C. S. Rawat, J.

This petition u/s 482 Cr.P.C. has been directed to quash the entire Criminal proceedings of Criminal Complaint Case No. 162 of 2006, Ikram Ahmad Vs. Sarafat Ansari u/s 384, 406 and 420 I.P.C. pending before the court of 1st Additional Civil Judge (J.D.), Roorkee, District Haridwar and also the summoning order dated 04.04.2006.

Brief facts for the disposal of this petition are that the applicant had filed a complaint against the respondent No.3 on 22.02.2006 u/s 138 N.I.Act alleging therein that the respondent No. 3 had given him cheques which were dishonoured. Thereafter, the learned Magistrate passed the order dated 22.02.2006 by which the respondent No. 3 was summoned for the offence u/s 138 N.I.Act. It is also alleged in the petition that as a counter blast, the respondent No. 3 filed a complaint u/s 384, 406 and 420 I.P.C. against the applicant on 04.03.2006 with the allegation that the opposite party No. 3 was a member of the Committee of Rs. 5000/- pm. Started from 01.04.2004 and in the month of November, 2004, the opposite party No. 3 had taken the money of the committee of Rs. 95,000/- which was paid by

the applicant to the opposite party No. 3 in instalments by cheques and as a security he has taken the cheques from the opposite party No. 3 returnable after closing the insltalments. The opposite party No. 3 paid all the instalments. It is also stated that the opposite party No. 3 has also stated another committee of Rs. 5,000/- pm with the applicant on 01.05.2005 and he paid 13 instalments of total Rs. 65,000/- to the applicant. It is also alleged that the applicant became dishonest and threatened to misuse the cheque for misappropriation of money. Thereafter, the opposite party No. 3 made a complaint against the applicant u/s 384, 406 and 420 I.P.C. Statement of the opposite party No. 3 was recorded u/s 200 Cr.P.C. and as a witness statements of Jamshed-PW1 and Irfan-PW2 were recorded u/s 200 and 202 Cr.P.C. Thereafter, the learned Magistrate passed the summoning order of cognizance dated 04.04.2006 whereby the applicant was summoned u/s 406 I.P.C.

Feeling aggrieved by the said order, the present petition has been preferred.

Heard learned counsel for the parties and perused the record.

It is contended by the learned counsel for the applicant that the opposite party No. 3 has filed this complaint the malafide intention and ulterior motive for harassing the applicant by concealing the material facts in the complaint by misleading the trial court and he has filed the criminal complaint against the applicant as a counter blast of his case filed prior to this for the offence u/s 138 N.I.Act by preparing false and fabricated prosecution story. It was further contended that the applicant had not committed any offence and as such, the complaint is bad. Learned A.G.A. refuted the contention. It is settled principle of law, if the complaint discloses offence and there is legal evidence in support of the complaint, the court has no jurisdiction to entertain the petition u/s 482 Cr.P.C. In the present petition, it is very much in the evidence that the applicant has not given the money which was entrusted to him by the opposite party

No. 3. The applicant had also filed the copy of the statement recorded u/s 200 and 202 Cr.P.C. which reveals that there is prima-facie case against the applicant. It cannot be said that it is the counter blast by the opposite party No. 3.

In view of the forgoing discussion, the petition devoids of merit is liable to be dismissed and is dismissed accordingly.

(J. C. S. Rawat, J.)

22nd May, 2006
Shiv